

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

SCOTT T. BALLOCK,

Plaintiff,

v.

CIVIL ACTION NO.: 1:17-CV-52
Honorable Irene M. Keeley

ELLEN RUTH COSTLOW,
STATE TROOPER MICHAEL KIEF,
STATE TROOPER RONNIE M.
GASKINS, AND STATE TROOPER
CHRIS BERRY,

Defendants.

**DEFENDANT ELLEN RUTH COSTLOW'S MOTION TO
STRIKE PLAINTIFF'S OPPOSITION TO MOTION TO
DISMISS; AND MOTION IN SUPPORT OF DEFENDANTS
KIEF, GASKINS AND BERRY'S MOTION TO STRIKE**

Defendant Ellen Ruth Costlow, by counsel, hereby moves this Honorable Court to strike the Plaintiff's Opposition to Defendant Costlow's Motion to Dismiss, ECF No. 22, based upon said document not being timely filed, and to grant the Motion to Strike Plaintiff's Response in Opposition to Joint Motion, ECF No. 23, filed by Defendants Kief, Gaskins and Berry on July 12, 2017, based upon the Plaintiff's Response not being timely filed and exceeding page limits ordered by the Court.

Ms. Costlow's Motion is based upon the following:

1. After Defendants Costlow, Kief, Gaskins and Berry filed a Joint Motion to Dismiss the Plaintiff's original Complaint on May 2, 2017, ECF Nos. 12-13, the Plaintiff filed an Amended Complaint against all Defendants on May 25, 2017. ECF No. 14.

2. Defendants Kief, Gaskins and Berry filed a Motion to Dismiss the Amended Complaint on June 8, 2017, ECF Nos. 15-16, and Defendant Costlow filed a Motion to Dismiss and Memorandum the following day. ECF Nos. 17-18.
3. The Court then entered a Roseboro Notice, ECF 19, on June 12, 2017, which Notice informed the Plaintiff of his right to file an opposition to the Defendants' Motion, explicitly stating in boldface that the Plaintiff had **twenty-one (21) days** from the date of the Notice to file any opposition the Plaintiff may have to the Defendants' Motions, and stating, also in boldface, that the Plaintiff's opposition "**shall not exceed 25 pages.**"
4. The Plaintiff, thus, had until July 3, 2017 to file any opposition of 25 or fewer pages to the Defendants' Motions.
5. The Plaintiff violated both these directives, filing a 27 page Opposition to Joint Motion to Dismiss by State Trooper Defendants Kief, Gaskins and Berry, ECF No. 21, and an eight (8) page Opposition to Defendant Costlow's Motion to Dismiss, ECF No. 22, on July 6, 2017.
6. The Plaintiff's Opposition to the Trooper Defendants' Joint Motion provides most of the opposition the Plaintiff could muster to Ms. Costlow's Motion to Dismiss. The Plaintiff's Opposition, directed exclusively at Ms. Costlow's Motion to Dismiss, only addresses Ms. Costlow's arguments for dismissal on two (Malicious Prosecution-Fifth Claim; and Breach of Contract-Thirteenth Claim) of the ten State law claims alleged against her.
7. The Plaintiff's Opposition to Ms. Costlow's Motion specifically references his Motion in Opposition to the Troopers' Joint Motion as providing the remainder of his

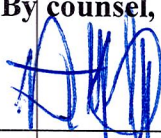
opposition to Ms. Costlow's Motion. Plaintiff's Opposition to Costlow's Motion, ECF No. 22 at § V. Ms. Costlow, thus, has nearly as much at stake in a ruling on the Trooper Defendants Motion to Strike as do the Troopers themselves, and moves the Court to grant the Trooper Defendants' Motion for the reasons articulated therein.

8. As noted in the Trooper Defendants' Motion to Strike, "[w]here a filing deadline is specified by the court, papers to be filed must reach the clerk's office by the deadline date." Clark v. Milam, 152 F.R.D. 66, 69 (S.D. W. Va. 1993), See also New Wellington Financial Corp. v. Flagship Resort Development Corp., 416 F.3d 290, 297 (4th Cir. 2005) ("District courts have the inherent authority—and in fact the duty—to manage cases by setting time limits for the filing of motions. An inseparable corollary is that the court can ignore arguments forfeited because they are not presented consistent with the court's time limits."). Accordingly, "papers arriving after a deadline are untimely even if mailed before the deadline." Clark, 152 F.R.D. at 69.
9. The Plaintiff's Oppositions to both Ms. Costlow's Motion to Dismiss and the Joint Motion to Dismiss filed by Defendant's Kief, Gaskins and Berry were not timely filed and should not be considered, with the Plaintiff forfeiting arguments raised in his respective Oppositions.
10. In addition, the Plaintiff also violated the Court's directive regarding page limits in his Opposition to the Trooper Defendants' Motion to Dismiss. The Plaintiff attached a brief Motion to Exceed the Court's 25 page limit, but did not wait for a ruling on said Motion before exceeding the Court's prescribed limits.

11. The Plaintiff, thus, ignored the only provisions emphasized in boldface by the Court in its Roseboro Notice, and applicable law unambiguous holds that the Plaintiff's failure to follow time and page limits directives calls for striking of the Plaintiff's Oppositions to Ms. Costlow's Motion to Dismiss, and the Motion to Dismiss filed by Kief, Gaskins and Berry.

WHEREFORE, Ms. Costlow prays that the Court enters an Order Striking the Plaintiff's Opposition to Defendant Costlow's Motion to Dismiss, grants the Motion to Strike filed by Defendants Kief, Gaskins and Berry, and any and all other such relief as the Court finds just and proper.

**RESPECTFULLY SUBMITTED,
ELLEN RUTH COSTLOW,
By counsel,**



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GASKINS, AND STATE TROOPER
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Defendants.

CERTIFICATE OF SERVICE

I hereby certify that, on the 12th day of July 2017, I filed the foregoing “Defendant Ellen Ruth Costlow’s Motion to Strike Plaintiff’s Opposition to Motion to Dismiss; and Motion in Support of Defendants Kief, Gaskins and Berry’s Motion to Strike” with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the following:

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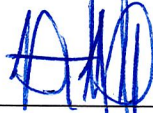
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RESPECTFULLY SUBMITTED,



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